

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 526 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

IDRISMIYA MUKHATYAR AHMED SAIYED

Versus

KALUSINH ADITRAM BARAIYA

Appearance:

MR VC DESAI for appellant
MR BS SUPEHIA (appointed) for Respondent No. 1
MR DN PATEL, APP, for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/07/98

ORAL JUDGEMENT

Learned advocate Mr V.C.Desai on behalf of the appellant and learned advocate Mr B.S.Supehia on behalf of the respondent No.1 were heard at length.

This appeal is directed against the judgment of the learned JMFC, Kapadwanj, recording order of acquittal in criminal case No.98/78, by which the present appellant was tried for offences under section 16(a)(i) of the Food Adulteration Act.

From the record, it clearly appears that the learned Magistrate has given a complete go by to mandatory provisions of section 313 of the Criminal Procedure Code. The said provision requires that each incriminating circumstances must be put to the accused which are found in the evidence and his explanation is required to be recorded which ultimately are required to be taken into consideration while deciding the matter. On going through the record, it appears that only two questions have been asked to the accused. That too the questions are so general that there is complete breach of mandatory provisions of section 313 of the Criminal Procedure Code. This is a very serious trial and in such trial, the accused is required to be given ample opportunity to defend for which section 313 of the Code is enacted. In the present case, even the report of the analyser has not been put to the accused so as to explain the circumstances against him. In this view of the matter, certainly, the accused has not been given a fair trial and opportunity to defend himself completely.

In these circumstances, the impugned judgment dated 14.5.86 of the learned trial Magistrate is set aside and the matter is remanded to the learned JMFC, Kapadwanj with a direction that the circumstances appearing against the accused be put to the accused as envisaged by section 313 of the Criminal Procedure Code and after recording of the statement of the accused, in the above stated manner, prosecution as well as accused be given an opportunity of being heard and the learned Magistrate thereafter shall decide the matter in accordance with law from the evidence which is already on record. The learned Magistrate shall decide the matter within two months from the date of receipt of writ of this Court.

In this view of the matter, the appeal stands disposed of accordingly.

.....